

October 23, 2009

**C. Wesley Strickland**  
805.882.1490 tel  
805.965.4333 fax  
wstrickland@bhfs.com

**VIA ELECTRONIC MAIL**

Brad Hubbard  
U.S. Bureau of Reclamation  
Resources Management Division  
2800 Cottage Way, MP-410  
Sacramento, CA 95825  
bhubbard@usbr.gov

**RE: Comments on 2010 Water Transfer Issues**

Dear Mr. Hubbard:

This letter contains comments on the 2010 Water Transfer Issues on behalf of our client Sacramento River Ranch, LLC (Ranch). The Ranch participated in the 2009 Drought Water Bank and thus has valuable experience with the implementation of water transfers that we hope you find useful and persuasive.

**General Comments**

As a potential participant in future water transfers, the Ranch has a vested interest in working with the U.S. Bureau of Reclamation (Bureau) and California Department of Water Resources (DWR) to create a hydrologically, environmentally and economically sustainable program for 2010 that can serve as the foundation for water transfers in future years. We believe the major issue going forward is the economic sustainability of a program and the necessity to reduce transactional and other recurring costs. It is clear that there will be long-term demand for water transfers, and supply will most likely be contingent on the requirements and restrictions placed on sellers by the agencies involved. The main goal of the Bureau and DWR should be to help create an efficient market for water where buyers can buy, and sellers can sell, without undue burdens that would prevent a transfer from occurring. We acknowledge that there are many legitimate issues that need to be addressed to make a transfer program sustainable, including environmental and local county concerns. By addressing these issues in the most efficient way possible, we feel that a foundation can be built that will be the cornerstone for future transfers.

In order to create a sustainable water transfers program by reducing transaction costs, it will be important for the Bureau and DWR to design the technical requirements for sellers and buyers

with clear rules that do not change frequently. Significant expenses are involved for the Bureau, DWR and individual water rights holders to develop or change water transfer rules, based on the review and understanding of applicable requirements, collection and analysis of information by transfer parties, and review of information by the Bureau and DWR. We suggest that the best approach would be to settle on a clear set of rules as soon as possible, and then to leave the same rules in place, or relax them so that already approved transfers are not affected, for a period of several years. In addition, the Bureau and DWR should make their water transfers program continuous, so that a water rights holder who goes through the review process can rely on the results for several years to reduce per-year transaction costs.

### **Specific Comments**

In addition to the general comments above, we have reviewed the several issue papers put out by the Bureau and DWR and have specific comments on the issues below.

#### **1. Issue 2: ETAW Values**

- (a) As noted above, there must be certainty in the criteria before potential transferors start the evaluative process, and across multiple years to make the program economically efficient. If ETAW figures need to be reviewed, we believe the review should happen no more frequently than 10 years, and on a known schedule.
- (b) We believe that transfers related to non-alfalfa hay varieties such as orchard grass, rye grass, oats and clover mixes that are being grown for commercial purposes should be allowed. These crops use substantial quantities of water, and although more detailed analysis may be needed for individual properties than for some other crops, such analysis can be done. For example, at the Ranch, cultural practices for these crops are similar to alfalfa production and are not used primarily as pasture. There are publicly available ETAW values for these crops and we recommend that they be used for 2010 transfers until a more firm approach can be developed for future transfers.
- (c) Should further research be necessary to confirm ETAW values for certain crops, the Ranch would consider participating with the agencies in a pilot program that would help determine accurate values for these crops. Including these crops would likely provide additional sellers to participate in the program and help resolve water supply concerns for the State of California.

#### **2. Issues 3 and 4: Delta/Yolo Bypass Transfers**

- (a) It appears that the primary issue with transfers from the Yolo Bypass area is proving connectivity to the Delta from the Tule Canal. The task seems to be too

large for any one party to justify taking on alone. We believe that there needs to be some collaboration between interested parties along the canal and the DWR to come up with plan to reach a verdict on the connectivity question. We would be interested in working on this issue alongside other interested parties.

- (b) We note that although there may be time periods when the Toe Drain experiences net inflows rather than outflows, fallowing or groundwater substitution by transferors in this area can still provide benefits to the Bureau and DWR projects, since such operations would increase outflow when compared to a non-transfer scenario. There is also an increase of water flowing into the Delta pool, which should have beneficial impacts generally in the Delta, even if there are net inflows into the lower reaches of the Toe Drain.
- (c) In order to justify extensive monitoring efforts discussed in this issue paper for future transfers, the period of such transfers should be longer than a single year, or at least the technical review should not have to be repeated after a single year in which compliance with the rules is shown.

3. Issue 9: Streamflow Depletion Due to Groundwater Pumping/Well Review

- (a) We believe one of the primary concerns for water rights holders will be the recurring costs involved with modeling wells' connectivity to the river and meeting metering requirements each year. The costs associated with meeting the well specifications for ground water substitution in the 2009 Drought Water Bank were substantial. Those costs are only economically efficient if they constitute a one-time outlay that would put the well owner in a position to use demonstrated compliant facilities in multiple groundwater substitution transfers. If sellers will have to continue to alter wells and meters year to year to meet changing requirements for transfers, the economic picture will be much less attractive for sellers and will result in less water being available.
- (b) We recommend using the 2009 criteria for 2010. Should additional criteria need to be established for future transfers, we recommend that the new criteria be permanent and as cost effective and simple as possible.

4. CEQA

- (a) For long-term transfers in future, we recommend that a streamlined environmental review process be developed. We are concerned that having to individually prepare a CEQA document may be cost prohibitive as well as potentially overly time consuming. For the potential 2010 water bank, we would expect one year transfers should be exempt from CEQA review according to Water Code § 1729.

Brad Hubbard  
October 23, 2009  
Page 4

### **Conclusion**

As mentioned above, we believe that continued collaboration between the Bureau, DWR and water rights holders on these issues is probably the best way to reach a conclusion that is amenable to all parties involved. We strongly encourage that a structure must be formed that will economically benefit all parties involved from buyers and sellers and each governmental agency. We are excited to participate in working out these issues and helping alleviate short and long-term water concerns in California.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Strickland', with a stylized, cursive script.

C. Wesley Strickland